

IN THE CIRCUIT COURT OF ADAIR COUNTY
STATE OF MISSOURI

STATE OF MISSOURI ex rel.)	
JEREMIAH W. ("JAY") NIXON,)	
Attorney General, State of Missouri, and)	
the MISSOURI DEPARTMENT OF)	
NATURAL RESOURCES,)	
)	
Plaintiff,)	
)	
v.)	Cause No. CV101-132CC
)	
RYE CREEK CORPORATION,)	
a Missouri corporation,)	
CONTINENTAL INVESTMENT)	
CORPORATION, a Georgia corporation,)	
CONTINENTAL TECHNOLOGIES OF)	
GEORGIA, a Georgia corporation, and)	
WASTEMASTERS CORPORATION,)	
a Maryland Corporation, and)	
CHARLES ALLEN THARP, Individually,)	
)	
Defendants.)	

PARTIAL CONSENT JUDGMENT AND ORDER OF INJUNCTION
AGAINST DEFENDANT RYE CREEK CORPORATION AND
DEFENDANT CHARLES THARP

WHEREAS, plaintiff, State of Missouri, on behalf of the Missouri Department of Natural Resources ("the Department"), filed a petition alleging that defendants, Rye Creek Corporation, Continental Investment Corporation, Continental Technologies of Georgia, Wastemasters Corporation and Charles Allen Tharp violated and continue to violate the Missouri Solid Waste Management Law, Chapter 260, RSMo, and the Solid Waste Disposal Area Operating Permits issued to Rye Creek Corporation by plaintiff,

which authorizes the operation of a sanitary waste disposal area and a demolition waste disposal area; and

WHEREAS, plaintiff and defendant Rye Creek Corporation and defendant Charles Allen Tharp have consented, without trial or adjudication of any issue of fact or law herein, to the entry of this Consent Judgment;

NOW THEREFORE, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Court has read plaintiff's Petition and has been fully advised of its premises. The Court is satisfied that the provisions of this Consent Judgment amicably resolves the issues cognizable under Chapter 260, RSMo, and the Court finds that this Consent Judgment does protect the public interest.

2. For the purposes of this Judgment, this Court has jurisdiction over the subject matter of this action and over the parties consenting hereto pursuant to Chapter 260, RSMo.

3. This Judgment addresses matters alleged in plaintiff's Petition for the Assessment of Statutory Civil Penalties to be Paid to the Adair County School Fund and for Preliminary and Permanent Injunction. The subject matter of this action involves violations of the Missouri Solid Waste Management Law, §§ 260.200 to 260.345, RSMo, and the regulations promulgated thereto, with respect to the Rye Creek sanitary and demolition landfill located in Adair County, Missouri (“the Rye Creek Landfills”).

4. The Provisions of this Consent Judgment shall apply to and be binding upon the parties executing this Consent Judgment, their officers, agents, successors and assigns. Defendant Rye Creek Corporation and defendant Charles Tharp shall be jointly and severally responsible for the orders contained in this Consent Judgment.

5. The parties acknowledge that they understand the terms of the following Consent Judgment, agree to be bound thereby and consent to its entry without trial.

6. This Consent Judgment in no way releases Rye Creek Corporation, Continental Investment Corporation, Continental Technologies of Georgia, Wastemasters Corporation and Charles Tharp from their obligation to comply with any federal, state or local statutes, ordinances and regulations not referenced herein.

7. This Consent Judgment does not apply to, discharge, or in any way affect plaintiff's rights as to defendants, Continental Investment Corporation, Continental Technologies of Georgia and Wastemasters Corporation.

8. Defendant Rye Creek Corporation and defendant Charles Tharp agree to and are permanently ordered and enjoined to obey, abide by and comply with this Order, and the Missouri Solid Waste Management Law, §§ 260.200 to 260.345, RSMo, and the regulations promulgated thereto, except as stated in ¶ 31 herein or as authorized by this Order, for any and all future operations at the Rye Creek Landfills.

9. Defendant Rye Creek and defendant Charles Tharp are permanently ordered to comply with 10 CSR 80-3.010, "*Design and Operation of a Sanitary Landfill*" and all

other aspects of the Missouri Solid Waste Management Law and regulations, except as stated in ¶ 31 herein or as authorized by this Order, at the Rye Creek Sanitary Landfill.

10. Defendant Rye Creek and defendant Charles Tharp are permanently ordered to comply with 10 CSR 80-4.010, “*Design and Operation of a Demolition Landfill*” and all other aspects of the Missouri Solid Waste Management Law and regulations, except as stated in ¶ 31 herein or as authorized by this Order, at the Rye Creek Demolition Landfill.

GROUNDWATER MONITORING

11. Except only as stated in ¶ 31 herein, defendant Rye Creek Corporation and defendant Charles Tharp agree to and are ordered to comply with the Groundwater Monitoring Sampling and Analysis Plan, as approved by the Department on the 18th day of December, 2001, and any subsequent revisions, a copy of which is attached hereto, incorporated herein and marked Exhibit A. Compliance with said Sampling and Analysis Plan includes, but is not limited to, electronically submitting and reporting semi-annual sampling results to the Department within ninety (90) days of the sampling event.

12. Except only as stated in ¶ 31 herein, defendant Rye Creek Corporation and defendant Charles Tharp agree to and are ordered to comply with the Groundwater Monitoring Program and any subsequent revisions as approved by the Department on the 29th day of May, 2002, a copy of which is attached herein and marked Exhibit B.

GAS (METHANE) MONITORING

13. Within Forty-five (45) days of the entry of this Judgment, defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to install two (2) methane gas monitoring wells at the Rye Creek Sanitary Landfill as approved in the March 11, 2003, gas remediation plan approval letter, and as modified by the Department's August 21, 2003, letter, a copy of which are attached herein and marked Exhibit C.

14. Within thirty (30) days of the entry of this Judgment, defendant Rye Creek Corporation and defendant Charles Tharp are ordered to cap and seal all gas monitoring wells at the Rye Creek Sanitary and Demolition Landfills in accordance with 10 CSR 80-3.010(14) (B) 1 and the Department's technical bulletin titled "*Design and Construction of Landfill Gas Monitoring Wells.*" Defendant Rye Creek Corporation and defendant Charles Tharp acknowledge they have received a copy of "*Design and Construction of Landfill Gas Monitoring Wells.*" Said caps and seals shall have a sampling port for the direct attachment of the gas sampling instrument so that samples may be drawn directly from the well.

15. Except only as stated in ¶ 31 herein, defendant Rye Creek Corporation and defendant Charles Tharp agree to and are permanently ordered to comply with the Gas Monitoring Plan and any subsequent revisions, as approved by the Department on the 31st day of July, 1996, a copy of which is attached hereto, incorporated hereto and marked

Exhibit D. Compliance with said Gas Monitoring Plan includes, but is not limited to, submitting to the Department weekly electronic Gas Monitoring Reports to swgasmon@dnr.mo.gov. Defendant Rye Creek Corporation and defendant Charles Tharp agree to and are ordered to take any and all corrective action, with the approval of the Department, to control any and all gas migration from the Rye Creek Sanitary or Demolition Landfill except as stated in ¶ 31 herein.

CLOSURE OF SANITARY LANDFILL

16. On August 30, 2002, the Rye Creek Sanitary Landfill (permit #100103) ceased accepting waste. Defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to accept no more waste at the Rye Creek Sanitary Landfill (Permit #100103) in the future. Furthermore, except as stated in ¶ 31 herein, defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to immediately initiate and complete closure and post-closure activities at the Rye Creek Sanitary Landfill pursuant to 10 CSR 80-2.030 and the attached guidance document titled “Rye Creek, Inc. Sanitary Landfill Closure and Post-Closure Procedure”, incorporated herein and marked Exhibit E. Said closure and post-closure activities shall be subject to the approval of the Department. Defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to complete closure of the Rye Creek Sanitary Landfill pursuant to the requirements contained in Exhibit E on or before November 1, 2004. Defendant Rye Creek Corporation and defendant Charles Tharp must complete closure by no later than November 1, 2004, or the stipulated penalty provisions contained in ¶ 26 herein shall be due and owing.

17. If defendant Rye Creek Corporation and defendant Charles Tharp fail to complete closure activities at the Sanitary Landfill per 10 CSR 80-2.030 or the “Rye Creek, Inc. Sanitary Landfill Closure and Post-Closure Procedure” (Exhibit E), on or before November 1, 2004, in addition to any and all legal remedies available to it under

the Missouri Solid Waste Management Law and implementing regulations, the Department may pursue forfeiture of all Financial Assurance Instruments in place per 10 CSR 80-2.030 for the Rye Creek Sanitary Landfill. Defendant Rye Creek Corporation and Defendant Charles Tharp agree not to appeal the forfeiture of all Financial Assurance Instruments for the Rye Creek Sanitary Landfill and waive their rights to appeal pursuant to Section 260.235, RSMo and 10 CSR 80-2.030(4)(G).

CLOSURE OF DEMOLITION LANDFILL

18. On June 30, 2004, defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to permanently cease accepting waste at the Rye Creek Demolition landfill (permit #200101). Thereafter, except as stated in ¶31 herein, defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to immediately initiate and complete closure and post-closure activities at the Demolition landfill pursuant to 10 CSR 80-2.030 and the attached guidance document titled “Rye Creek, Inc. Demolition Landfill Closure and Post-Closure Procedure”, incorporated herein and marked Exhibit F. Said closure and post-closure activities at the Demolition Landfill shall be subject to the approval of the Department. Defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to complete closure activities at the Rye Creek Demolition Landfill on or before November 1, 2004. If defendant Rye Creek Corporation and defendant Charles Tharp fail to complete closure (pursuant to Exhibit F) of the Rye Creek Demolition Landfill, subject to the approval of the Department, on or before November 1, 2004, in addition to any and all legal remedies available to it under the Missouri Solid Waste Management Law and implementing regulations, the stipulated penalty provisions contained in ¶ 26 shall be due and owing.

19. If defendant Rye Creek Corporation or defendant Charles Tharp fail to complete closure activities at the Demolition landfill pursuant to 10 CSR 80-2.030 or the “Rye Creek, Inc. Demolition Landfill Closure and Post-Closure Procedure” (Exhibit F),

subject to the approval of the Department, in addition to any and all legal remedies available to it under the Missouri Solid Waste Management Law and implementing regulations, the Department may pursue forfeiture of all financial assurance instruments in place as authorized by 10 CSR 80-2.030 for the Rye Creek Demolition landfill.

Defendant Rye Creek Corporation and Defendant Charles Tharp agree not to appeal the forfeiture of all Financial Assurance Instruments for the Rye Creek Demolition Landfill and waive their rights to appeal pursuant to Section 260.235, RSMo and 10 CSR 80-2.030(4)(G), except that defendant Rye Creek Corporation and defendant Charles Tharp reserve the right to appeal the forfeiture of the FAI referenced in ¶ 21 herein.

CLOSURE AND POST-CLOSURE COSTS

20. Upon the date of the entry of this Judgment, defendant Rye Creek Corporation and defendant Charles Tharp agree to pay Twenty-four Thousand Dollars (\$24,000.00) into Registry of the Circuit Court of Adair County, Missouri. Said amount shall only be used by the State of Missouri to assist in the financial costs involved in conducting closure and post-closure activity or maintenance at the Rye Creek Sanitary or Demolition Landfill. Only the State of Missouri, in its sole discretion, may petition the Circuit Court of Adair County, Missouri, to expend this Twenty-four Thousand Dollar (\$24,000.00) amount for closure and post-closure activities. If the State of Missouri determines that the Twenty-four Thousand Dollars (\$24,000.00) is not needed for closure or post-closure activity, the Circuit Clerk shall, upon motion by the State, deposit the Twenty-four Thousand Dollars (\$24,000.00) with the “Treasurer of Adair County as Trustee for the Adair County School Fund.”

DEMOLITION LANDFILL FINANCIAL ASSURANCE INSTRUMENTS (FAIs)

21. Upon the date of the entry of this Judgment, defendant Rye Creek Corporation and defendant Charles Tharp shall submit additional Financial Assurance Instruments (“FAIs”) for the Demolition Landfill in the amount of One Hundred Forty-eight Thousand Dollars (\$148,000.00) that are acceptable to the Department and which comply with the requirements of 10 CSR 80-2.030. Thereafter, defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to maintain said FAI for

the Demolition landfill that is acceptable to the Department and which comply with Missouri Solid Waste Management Law and relevant regulations. Said Demolition FAI must be maintained by defendant Rye Creek Corporation and defendant Charles Tharp until the Demolition Landfill is properly closed pursuant to the Closure Procedures as defined in Exhibit F, at which time the Department shall provide a written release from the FAI to defendant Rye Creek Corporation and defendant Charles Tharp from the requirement to maintain said FAIs as provided for herein.

22. Defendant Rye Creek Corporation and defendant Charles Tharp agree to comply with all aspects of 10 CSR 80-2.030, and specifically to 10 CSR 80-2.030(4)(B) as it pertains to annual updates of FAIs for the Demolition landfill.

23. In the event defendant Rye Creek Corporation and defendant Charles Tharp fail to maintain a FAI for the Demolition Landfill in the amount and form prescribed in ¶ 21, the Department may pursue forfeiture of all FAIs in place as authorized by 10 CSR 80-2.030 for the Demolition Landfill. Defendant Rye Creek Corporation and Defendant Charles Tharp agree not to appeal the forfeiture of all Financial Assurance Instruments for the Rye Creek Demolition Landfill and waive their rights to appeal pursuant to Section 260.235, RSMo and 10 CSR 80-2.030(4)(G), except that defendant Rye Creek Corporation and defendant Charles Tharp reserve the right to appeal the forfeiture of the FAI referenced in ¶ 21 herein.

**SANITARY LANDFILL FINANCIAL
ASSURANCE INSTRUMENTS (FAI)**

24. Defendant Rye Creek Corporation and defendant Charles Tharp agree to and are ordered to not alter the status of any and all existing financial assurance instruments (“FAIs”) for closure and post-closure activities currently in place for the Sanitary Landfill. If defendant Rye Creek Corporation or defendant Charles Tharp fail to complete closure activities at the Sanitary Landfill pursuant to this Order, the Department may pursue forfeiture of all FAIs in place as authorized by 10 CSR 80-2.030 for the Sanitary Landfill. Defendant Rye Creek Corporation and Defendant Charles Tharp agree not to appeal the forfeiture of all Financial Assurance Instruments for the Rye Creek Sanitary Landfill and waive their rights to appeal pursuant to Section 260.235, RSMo and 10 CSR 80-7.030(4)(G).

COVER AND LITTER

25. Defendant Rye Creek Corporation and defendant Charles Tharp, pursuant to 10 CSR 80-4.010, are ordered and agree to operate the Demolition landfill so as to collect and remove litter on a daily basis and to apply adequate cover as outlined in 10 CSR 80-4.010(17).

CIVIL PENALTIES

26. Defendant Rye Creek Corporation and defendant Charles Tharp are ordered and agree to a civil penalty in the amount of Fifty Thousand Dollars (\$50,000.00) for exceeding the permitted elevations of the Sanitary Landfill, in violation of 10 CSR 80-3.010 and the terms and conditions of Permit # 100103. Fifty Thousand Dollars (\$50,000.00) of the civil penalty shall be suspended on the condition that defendant Rye Creek Corporation and defendant Charles Tharp complete Closure Procedures for both the Sanitary Landfill and Demolition Landfill by November 1, 2004, as outlined in the attached guidance documents entitled “Rye Creek, Inc. Sanitary Landfill Closure and Post-Closure Procedure,” (Exhibit E) and “Rye Creek, Inc. Demolition Landfill Closure and Post-Closure Procedure” (Exhibit F), respectively. Said closures shall be subject to the department’s approval. In the event that Rye Creek Corporation or Charles Tharp fail to complete the Closure Procedures for both the Sanitary Landfill and the Demolition Landfill on or before November 1, 2004, pursuant to the “Rye Creek Landfill Closure and Post-Closure Procedures” (Exhibit E) document and the “Rye Creek Demolition Landfill, Inc. Closure and Post Closure Procedure” (Exhibit F), the Fifty Thousand (\$50,000.00) suspended penalty shall be immediately due and shall be payable to the “Adair County Treasurer as Trustee for the Adair County School Fund” and shall be forwarded to Harry D. Bozoian, Assistant Attorney General, P.O. Box 899, Jefferson City, MO 65102.

INDEMNIFICATION

27. Rye Creek Corporation and Charles Tharp, in his individual capacity, agree to reimburse and indemnify the State of Missouri for costs the State of Missouri may incur for proper closure of the Sanitary Landfill and Demolition Landfill in the event that defendant Rye Creek Corporation and/or Charles Tharp fail to complete the Closure Procedures for the Sanitary and Demolition Landfills as outlined in the attached Guidance Document titled “Rye Creek, Inc. Sanitary Landfill, Closure and Post-Closure Procedure” (Exhibit E) and “Rye Creek, Inc. Demolition Landfill, Closure and Post-Closure Procedure,” (Exhibit F). Said closures shall be subject to the department’s approval.

GENERAL TERMS

28. This Consent Judgment is not and shall not be interpreted to be a permit, or a modification of an existing Solid Waste Disposal Area Operating Permit, Missouri State Operating Permit (“MSOP”) or National Pollution Discharge Elimination System (“NPDES”) permit, nor shall it in any way relieve defendants Rye Creek Corporation, Continental Investment Corporation, Continental Technologies of Georgia, Wastemasters Corporation and Charles Tharp of its obligation to obtain Solid Waste Disposal Area permits, MSOP permits or NPDES permits, comply with the requirements of its current Solid Waste Disposal Area permit, MSOP and NPDES permits or with any other federal or state law or regulations or local ordinances. Any necessary new permits, or modifications of existing permits, must be complied with in accordance with applicable federal and state laws and regulations.

29. The Department and its agents and attorneys for the State of Missouri shall have authority to enter the landfill covered by this Order, at all times, to:

- (1) Complete inspections;
- (2) Monitor the progress of activity required by this Judgment;
- (3) Verify any data or information submitted to the Department in accordance with the terms of this Judgment,
- (4) Obtain samples, and, upon request, splits of any samples taken by the defendant or its consultants; and
- (5) Conduct closure and post-closure work.

This provision in no way limits, expands or otherwise affects any right of entry held by the plaintiff pursuant to applicable federal or state laws, regulations or permits.

30. Each party shall bear its own costs and attorney fees in this action. Defendants shall pay court costs.

31. The Court shall retain jurisdiction of this matter to enforce the terms and conditions of this Partial Consent Judgment and to resolve disputes arising hereunder as may be necessary or appropriate. This Judgment is a partial judgment and it is not intended as an adjudication of defendant Charles Tharp's individual liability or responsibility for post-closure responsibilities in connection with the Rye Creek Sanitary and Demolition Landfills. Subsequent to November 1, 2004, this Court will determine

defendant Charles Tharp's individual liability or responsibility, if any, for post-closure responsibilities in connection with the Rye Creek Sanitary and Demolition Landfills.

WE HEREBY CONSENT to the entry of this Judgment:

MISSOURI DEPARTMENT OF
NATURAL RESOURCES

Date

By: _____
JAMES D. WERNER, Director
Air and Land Protection Division

JEREMIAH W. ("JAY") NIXON
Attorney General

Date

By: _____
HARRY D. BOZOIAN
Assistant Attorney General

RYE CREEK CORPORATION

Date

By: _____

Date

By: _____
CHARLES ALLEN THARP
in his individual capacity

IT IS SO ORDERED.

CIRCUIT JUDGE

Dated: _____